

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

CARDINAL HEALTH 106, INC., f/k/a
JAMES W. DALY, INC., d/b/a
CARDINAL HEALTH,

Plaintiff,

v.

ALDAMEL, INC., d/b/a CRESCENT
PHARMACY, AMERISOURCE BERGER
DRUG CORP., f/k/a AMERISOURCE
CORPORATION, JAMES BRUDNICK
COMPANY, INC., COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
REVENUE, and INTERNAL REVENUE
SERVICE,

Defendants.

Civil No. _____

04 CV 10358 RWZ

Formerly
No. 2004-00045
Essex County Superior Court

UNITED STATES' REQUEST TO ENLARGE TIME TO ANSWER OR RESPOND

On, or about, February 23, 2004, the defendant United States of America removed this action to this Court. The defendant United States hereby respectfully requests this Court to enter an order enlarging, to and including March 26, 2004, the time in which the United States shall be permitted to serve an answer, a motion, or such other response as may be permitted by the Federal Rules of Civil Procedure, with respect to the complaint in the above-titled action.

No memorandum is submitted in support of this request as it is not a motion. As provided by Rule 6(b)(1) of the Federal Rules of Civil Procedure, the district court has discretion to grant requests to enlarge time "without motion or notice before the expiration of the period." (emphasis added) In contrast, Rule 6(b)(2) limits enlargements to the granting of motions made

upon grounds of excusable neglect. Accordingly, here we are making a timely request under Rule 6(b)(1).

In making this request, we note that Rule 81(c) of the Federal Rules of Civil Procedure governs the procedure in civil actions removed from the state courts to the United States District Courts. Rule 81(c) first provides that the Federal Rules of Civil Procedure apply to removed cases. The Rule goes on to prescribe certain periods for the service of an answer or other defenses. The governing time period under Rule 81(c) may be as short as five days after removal. The undersigned trial counsel represents that more than five days are required to prepare and to serve an appropriate response raising the defenses of the United States. Therefore, the United States requests thirty days in which to file a response to the complaint. A proposed Order is enclosed herewith.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

23 February 2004 Barbara H. Smith

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Respectfully submitted,

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